

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080512
	:	TRIAL NO. B-0504316
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
VICTOR FARRIS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Victor Farris, presents on appeal two assignments of error that together challenge the Hamilton County Common Pleas Court's judgment overruling, without a hearing, his motion to withdraw his guilty plea. We affirm the court's judgment.

Farris was convicted in 2005 upon guilty pleas to robbery and failing to comply with a police officer's order. He did not appeal his convictions.

In 2008, he filed a Crim.R. 32.1 motion to withdraw his guilty plea to the robbery charge. The common pleas court overruled the motion, and this appeal followed.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

A court may grant a postsentence motion to withdraw a guilty plea only upon a showing of a “manifest injustice.”² The defendant bears the burden of establishing a “manifest injustice.”³ The determination of whether the defendant has sustained his burden is committed to the sound discretion of the trial court and will not be disturbed on appeal unless the court is shown to have abused its discretion.⁴

In his motion, Farris cited the Ohio Supreme Court’s April 2008 decision in *State v. Colon*⁵ (“*Colon I*”) in support of his contention that the count of his indictment charging him with robbery had been defective because it had omitted the mens rea element of the offense. But in July of 2008, the court reconsidered its decision in *Colon I*. In its decision on reconsideration (“*Colon II*”), the court held that “the rule announced in *Colon I* is prospective in nature and applies only to those cases pending on the date *Colon I* was announced.”⁶

Farris was convicted in July of 2005. Because he took no direct appeal from his convictions, the convictions became final in August of 2005, when the time for filing his appeal expired.⁷ Thus, Farris’s case was not “pending” in April of 2008, when the supreme court decided *Colon I*.

Because the rule in *Colon I* did not apply to Farris’s case, the trial court did not abuse its discretion in overruling Farris’s motion to withdraw his guilty plea. Accordingly, we overrule the assignments of error and affirm the judgment of the court below.

² Crim.R. 32.1.

³ See *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph one of the syllabus.

⁴ See *id.*, paragraph two of the syllabus.

⁵ 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917.

⁶ *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, 893 N.E.2d 169.

⁷ See *id.* at ¶4.

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A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 24, 2008
per order of the Court _____.
Presiding Judge